

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

STEPHEN K. HEGE AND LINDA S.	)	
HEGE,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	C.A. 8:10-1578
	)	
AEGON USA, LLC, F/K/A AEGON USA,	)	
INC.; AND TRANSAMERICA LIFE	)	
INSURANCE COMPANY F/K/A LIFE	)	
INVESTORS INSURANCE COMPANY OF	)	
AMERICA,	)	
	)	
Defendants.	)	ANDERSON, SC
	)	OCTOBER 26, 2010
	)	10:30 A. M.

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TRANSCRIPT OF HEARING ON SUMMARY JUDGMENT MOTION

BEFORE THE HONORABLE G. ROSS ANDERSON, JR.  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES

FOR PLAINTIFFS:	PATRICK E. KNIE, ESQ. KNIE LAW FIRM P. O. BOX 5159 SPARTANBURG, SC 29304
	GARY E. CLARY, ESQ. GARY E. CLARY LAW OFFICE 111-2 HAMMOCK COURT CENTRAL, SC 29630
	SUSAN F. CAMPBELL, ESQ. HOPKINS AND CAMPBELL P. O. BOX 11963 COLUMBIA, SC 29211

FOR DEFENDANTS: BRENT O. E. CLINKSCALE, ESQ.  
CATHERINE R. ATWOOD, ESQ.  
WOMBLE CARLYLE SANDRIDGE AND RICE  
P. O. BOX 10208  
GREENVILLE, SC 29603

COURT REPORTER: GERI DUNN KIRKLEY  
U. S. COURT REPORTER  
P. O. BOX 1752  
ANDERSON, SC 29622  
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These proceedings taken by machine shorthand and  
transcribed by reporter.

1                                    OCTOBER 26, 2010

2                                    (CASE CALLED AT 10:30 A. M.)

3                                    THE COURT:            ALL RIGHT, BE SEATED.

4                                    MR. CLINKSCALE:    MAY IT PLEASE THE COURT, YOUR  
5 HONOR?

6                                    THE COURT:            YES, SIR.

7                                    MR. CLINKSCALE:    BRENT CLINKSCALE FOR  
8 TRANSAMERICA LIFE INVESTORS. IT IS OUR MOTION FOR  
9 SUMMARY JUDGMENT. SEATED NEXT TO ME IS MY ASSOCIATE, MS.  
10 CATHERINE ATWOOD. SHE IS WITH WOMBLE AS WELL. MAY I  
11 APPROACH, YOUR HONOR, AND USE THE PODIUM?

12                                    THE COURT:            SURE.

13                                    MR. CLINKSCALE:    MAY IT PLEASE THE COURT. YOUR  
14 HONOR, I THINK YOU ARE FAMILIAR WITH THESE LINES OF  
15 CASES. THIS IS ONE OF THE CASES THAT IS RELATED TO THE  
16 BOIL MATTER THAT YOU HAD PREVIOUSLY. IT DEALS WITH THE  
17 ACTUAL CHARGES LITIGATION. YOU ARE ALSO FAMILIAR, I  
18 BELIEVE, WITH ---

19                                    THE COURT:            BEFORE WE GO ANY FURTHER,  
20 JUSTIFY HOW YOU CAN FILE IN THIS CASE ABOUT 3,000  
21 SEPARATE, INDIVIDUAL PAGES FOR A MOTION FOR SUMMARY  
22 JUDGMENT.

23                                    MR. CLINKSCALE:    YOUR HONOR, WHAT WE TRIED TO  
24 DO, BECAUSE OF THE ISSUES DEALING WITH WHETHER THE  
25 FAIRNESS HEARING WAS ACTUALLY FAIR, AND THAT THE ISSUES

1 THAT WERE BROUGHT UP WERE ISSUES THAT THE PLAINTIFF HAD  
2 IN HIS COMPLAINT AND HAD ALREADY BEEN ACTUALLY HEARD BY  
3 THE COURT AND RULED ON. WE WANTED TO MAKE SURE THAT YOU  
4 HAD THAT IN THE RECORD. I MEAN, I APOLOGIZE IF IT WAS  
5 TOO MUCH. I JUST DIDN'T WANT TO HAVE SOMETHING THAT  
6 SHOULD BE IN THE RECORD THAT WAS ---

7 THE COURT: YOUR CLIENT HAS A HABIT OF  
8 FILING EXCESSIVE PAGES.

9 MR. CLINKSCALE: I THINK YOU'RE RIGHT. YOUR  
10 HONOR, THEY JUST HAVE AN ISSUE OF TRYING TO MAKE SURE  
11 THEY'VE GOT EVERYTHING IN THE RECORD BECAUSE OF THE  
12 ISSUES BROUGHT UP BY THE PLAINTIFF'S ATTORNEYS.

13 THE COURT: ALL RIGHT.

14 MR. CLINKSCALE: AND THAT'S THE ONLY REASON. I  
15 WOULD LIKE EVERYTHING WE DO TO BE A LOT SHORTER,  
16 INCLUDING MY ARGUMENT TODAY.

17 THE COURT: OH, IT WILL BE.

18 MR. CLINKSCALE: SO I WILL TRY TO DO THAT.  
19 ALSO. OUR ARGUMENT, YOUR HONOR, IS PRETTY SIMPLE. AS  
20 YOU KNOW, THE FINAL JUDGMENT IN THE RUNYAN SETTLEMENT, OF  
21 WHICH MR. HEGE WAS A PART, WAS FINALIZED DECEMBER 21,  
22 2009. AND THIS ACTION WAS FILED IN JUNE OF 2010. AS YOU  
23 KNOW, THERE IS NO DISPUTE THAT MR. HEGE RECEIVED THE  
24 NOTICE.

25 THE COURT: IS THIS GENTLEMAN WITH YOU?

1 MR. CLINKSCALE: YES, SIR, HE IS MY PARALEGAL.  
2 THIS IS JOVAN DUNGEE, MY PARALEGAL.

3 THE COURT: AND ALSO THE DOCUMENT BEARER.

4 MR. CLINKSCALE: YES, SIR, YOUR HONOR. I  
5 THOUGHT HE GOT ON THE ROAD BEFORE WE DID. THERE IS NO  
6 DOUBT THAT MR. HEGE RECEIVED THE NOTICE. THERE IS NO  
7 DOUBT THAT HE REVIEWED THE NOTICE. THERE IS NO DOUBT  
8 THAT HE MADE A CONSCIOUS DECISION NOT TO OPT OUT OF THE  
9 SETTLEMENT. HE EVEN FILED AN OBJECTION IN THE SETTLEMENT  
10 AND HE FILED A CLAIM IN THE SETTLEMENT. SO THERE IS NO  
11 DOUBT THAT HE IS PART OF THE CLASS AND THAT HE MADE A  
12 CONSCIOUS DECISION TO BE A PART OF THE CLASS.

13 HE ALSO HAD COUNSEL TO ARGUE FOR HIM AT THE  
14 FAIRNESS HEARING. A LOT OF THE ISSUES THAT ARE BROUGHT  
15 UP IN THE BRIEFS TODAY ARE ISSUES THAT THE JUDGE  
16 CONSIDERED IN THE FAIRNESS HEARING AND ---

17 THE COURT: I'M GOING TO TELL Y'ALL RIGHT UP  
18 FRONT WHAT BOTHERS ME. AS YOUR PREVIOUS COUNSEL DID,  
19 THEY HAVE GOT AN ELEVEN-PAGE DOCUMENT BY JUDGE SUSAN  
20 WEBBER WRIGHT, A VERY ABLE TRIAL JUDGE IN ARKANSAS.  
21 Y'ALL SPENT COUNTLESS HOURS AND SHE TURNED DOWN YOUR  
22 PETITION TO CERTIFY A CLASS, JUST TURNED YOU DOWN AFTER  
23 CONSIDERABLE BRIEFING. IT WOULD HAVE BEEN ALL RIGHT IF  
24 YOU HAD STAYED IN THAT COURT. BUT Y'ALL, YOUR CLIENT,  
25 VOLUNTARILY DISMISSED THAT CASE WHEN IT WAS OBVIOUS THAT

1 SHE WAS NOT GOING TO CERTIFY THE CLASS.

2 THEN YOU WENT OVER TO STATE COURT AND GOT A  
3 LOCAL JUDGE, WHO HAS ZERO CONNECTIONS WITH FEDERAL LAW  
4 AND FEDERAL CASES, GOT HIM TO CERTIFY THE CLASS. HE  
5 KNOWS NOTHING, OR VERY LITTLE, ABOUT SOUTH CAROLINA LAW.  
6 NOW, WHAT BOTHERS ME IS YOUR ACTIONS, OR YOUR CLIENT'S  
7 ACTIONS, CIRCUMVENTING THE LAW IN BRINGING A CASE IN A  
8 JURISDICTION WHERE THE PARTIES DO BUSINESS AND/OR RESIDE.  
9 NO QUESTION IN MY MIND THIS CASE BELONGED IN SOUTH  
10 CAROLINA.

11 BUT Y'ALL EVIDENTLY HAD A FAVORABLE JUDGE AND  
12 Y'ALL WENT THROUGH THE PROCESS, PAID THE PLAINTIFFS'  
13 LAWYERS THREE AND A HALF MILLION DOLLARS, AND GOT A PIECE  
14 OF PAPER THAT Y'ALL HAVE BEEN BRINGING AROUND SHOWING ALL  
15 JUDGES, "YOU CAN'T DO NOTHING. WE BEAT YOU TO THE DRAW.  
16 WE'VE GOT A RULING." THAT SOMEHOW SHOCKS MY SENSE OF  
17 JUSTICE. AND I HOPE IT DOES YOU BECAUSE TO LET THAT  
18 PROCEDURE GO THROUGH IN THIS CASE, OR IN ANY OTHER CASE,  
19 AND IN EFFECT PUTS ONE STATE JUDGE, WHO IS ELECTED, WHO  
20 DOESN'T HAVE TO KNOW ANY FEDERAL LAW, PUTS HIM ABOVE A  
21 UNITED STATES DISTRICT COURT JUDGE. YOUR POSITION IS, I  
22 HAVE TO FOLLOW HIM.

23 NOW, I'M GOING TO TELL YOU WHY I DON'T THINK  
24 SO, BECAUSE I THINK THE PROCEDURE IS FRAUGHT WITH FRAUD.  
25 THE ATTORNEYS' FEES, THERE WAS VERY LITTLE WORK DONE THAT

1 I CAN SEE. AND I'VE GOT ALL OF THE PAPERS FROM OVER  
2 THERE. I CAN'T SEE WHERE ANYBODY DID THREE AND A HALF  
3 MILLION DOLLARS' WORTH OF WORK. BUT THEY WERE PAID THAT  
4 AMOUNT BY YOU, YOUR CLIENT. IT JUST DOES NOT PASS THE  
5 SMELL TEST. NOW, I WILL HEAR YOU ON EVERY POINT THAT  
6 I'VE RAISED.

7 MR. CLINKSCALE: YOUR HONOR, MAY IT PLEASE THE  
8 COURT, I THINK THAT YOU KNOW THAT THE ISSUES IN ARKANSAS  
9 ARE ON APPEAL. AND AS YOU SAID BEFORE, THIS PROCESS OF  
10 GOING THROUGH THAT APPEAL IS TO APPEAL IT TO THE STATE  
11 SUPREME COURT AND THEN BY WRIT OF CERTIORARI TO THE  
12 SUPREME COURT OF THE UNITED STATES. AND I THINK THAT  
13 THAT IS THE PATH THAT THEY HAVE THAT THEY SHOULD USE.

14 THE COURT: BUT YOU'RE NOT ENTITLED TO ANY  
15 JUDGMENT AT THIS POINT IN THIS CASE.

16 MR. CLINKSCALE: EXCUSE ME, YOUR HONOR? I'M  
17 SORRY?

18 THE COURT: YOU ARE NOT ENTITLED TO SUMMARY  
19 JUDGMENT IF YOU TELL ME THAT CASE HAS NOT BEEN FINALLY  
20 ADJUDICATED.

21 MR. CLINKSCALE: YOUR HONOR, ACTUALLY UNDER  
22 ARKANSAS LAW, THE CASES SAY THAT IT IS A FINAL JUDGMENT.  
23 AND THAT FOR RES JUDICATA PURPOSES, IT IS DEEMED TO BE BY  
24 THE COURT IN ARKANSAS, EVEN THOUGH IT IS ON APPEAL. THE  
25 APPEAL DOES NOT DISTURB IT. AND I THINK WE POINT THAT

1 OUT IN OUR BRIEFS, YOUR HONOR.

2 THE COURT: WELL, THIS IS SHOCKING TO ME.

3 MR. CLINKSCALE: YES, YOUR HONOR. AND I THINK  
4 YOU KNOW WE HAVE HAD A NUMBER OF THE SOUTH CAROLINA  
5 PLAINTIFFS WHO HAVE ACTUALLY OPTED OUT OF THE SETTLEMENT.  
6 AND THOSE INDIVIDUALS HAVE FILED CASES.

7 THE COURT: HOW MANY HAVE WE GOT?

8 MR. CLINKSCALE: I THINK WE HAVE AT LEAST MAYBE  
9 THIRTY OR SO THAT OPTED OUT IN SOUTH CAROLINA.

10 THE COURT: HOW MANY HAVE Y'ALL GOT?

11 MR. KNIE: BETWEEN THIRTY AND FORTY.

12 MR. CLINKSCALE: YES, SIR, YOUR HONOR.

13 THE COURT: HOW MANY HAVE I GOT?

14 MR. KNIE: ACTUALLY ONLY A FEW OF THEM ARE  
15 ON CLAIM. SO YOU MAY HAVE TWO OR THREE THAT ARE ON  
16 CLAIM. THE REST OF THE CASES HAVE BEEN CONSOLIDATED AS A  
17 DECLARATORY JUDGMENT ACTION, JUST ASKING THE COURT TO  
18 ADDRESS THE STATUS OF ACTUAL CHARGE LAW AS IT MIGHT  
19 IMPACT THEM IF THEY EVER NEEDED TO FILE A CLAIM.

20 MR. CLINKSCALE: YES, YOUR HONOR. AND THOSE  
21 INDIVIDUALS HAVE OPTED OUT. HERE, MR. HEGE DID NOT OPT  
22 OUT AND MADE A CONSCIOUS DECISION NOT TO AND ACTUALLY  
23 FILED A CLAIM.

24 THE COURT: HE DIDN'T ADMIT THAT Y'ALL  
25 COMPLIED WITH DUE PROCESS.



1 MR. CLINKSCALE: EXCUSE ME, YOUR HONOR?

2 THE COURT: HE DID NOT AGREE THAT Y'ALL  
3 COMPLIED WITH DUE PROCESS IN THIS CASE.

4 MR. CLINKSCALE: HE HAD AN ARGUMENT ABOUT THE  
5 NOTICE, YES, SIR, YOUR HONOR.

6 THE COURT: IN OTHER WORDS, YOU ARE TELLING  
7 ME YOU ARE A WEALTHY INSURANCE COMPANY. Y'ALL CAN GO  
8 PICK OUT ANY JURISDICTION THAT YOU THINK WOULD BE  
9 FAVORABLE. AND THEN SINCE MOST OF THE PEOPLE LIKE THIS  
10 DON'T HAVE ANY MEANS WHATSOEVER AND YOU MAKE THEM COME  
11 WITH A LAWYER TO ARKANSAS. NOW, THAT SEEMS TO BE BURDEN  
12 SHIFTING. THE RICH OVERPOWERS THE NORMAL PERSON. THEY  
13 CAN'T JUST PICK UP AND GO OUT THERE.

14 MR. CLINKSCALE: MAY I RESPOND, YOUR HONOR?

15 THE COURT: SURE.

16 MR. CLINKSCALE: MR. HEGE DID HAVE  
17 REPRESENTATION AT THE HEARING. HE HAD MR. PAT KNIE. HE  
18 ACTUALLY REPRESENTED HIM AND PRESENTED HIS ARGUMENTS AT  
19 THE FAIRNESS HEARING, PURSUANT TO YOUR DIRECTION THAT  
20 THAT IS WHERE HE NEEDED TO GO TO ARGUE PER THE LAST  
21 HEARING WE HAD IN YOUR COURT.

22 I WOULD SAY THAT THE CLASS COUNSEL IN THE  
23 RUNYAN SETTLEMENT, HE ACTUALLY HAD THE FIRST CASES AND I  
24 THINK THE RUNYAN CASES, THE RUNYAN SETTLEMENT CASES, ARE  
25 A CONSOLIDATION OF SIX CASES. I THINK FOUR OF THEM ARE

1 STATE CLASS ACTIONS AND I THINK ABOUT TWO ARE ACTUALLY  
2 TWO CASES THAT WERE IN STATE COURT IN ARKANSAS. AND  
3 THAT'S WHY IT ENDED UP IN STATE COURT IN ARKANSAS.

4 THE COURT: NO, YOU RAN TO ARKANSAS BECAUSE  
5 YOU DISMISSED THE ACTION IN ARKANSAS FEDERAL COURT. THEN  
6 YOU BROUGHT IT SOME WEEKS LATER IN THE STATE COURT. YOUR  
7 DECISION.

8 MR. CLINKSCALE: YOUR HONOR, I THINK THAT WAS  
9 AN AGREEMENT OF BOTH PARTIES TO PROCEED IN THAT FASHION.

10 THE COURT: YOU HAD ---

11 MR. CLINKSCALE: I'M SORRY, YOUR HONOR. I  
12 DIDN'T MEAN TO INTERRUPT YOU.

13 THE COURT: YOU HAD CONSIDERABLE CONTROL  
14 OVER THE PARTIES, PAYING THEM A THREE AND A HALF MILLION  
15 DOLLAR FEE. I'M JUST SAYING THIS WHOLE THING DOES NOT  
16 PASS THE SMELL TEST.

17 MR. CLINKSCALE: MAY I RESPOND, YOUR HONOR?

18 THE COURT: SURE.

19 MR. CLINKSCALE: IF YOU LOOK AT THE FINDINGS BY  
20 THE RUNYAN COURT JUDGE, HE WENT THROUGH ALL OF THE DUE  
21 PROCESS ISSUES. HE WENT THROUGH ALL ---

22 THE COURT: HE CROSSED ALL THE "T's" AND  
23 DOTTED ALL THE "I's".

24 MR. CLINKSCALE: --- THE JURISDICTION ISSUES.  
25 YES, YOUR HONOR, HE DID. HE WENT THROUGH ALL OF THAT.

1 HE HAD ALL THOSE ARGUMENTS PRESENTED TO HIM.

2 THE COURT: BUT I THINK YOUR ACTIONS SPEAK  
3 LOUDER THAN HIS WORDS. GO AHEAD.

4 MR. CLINKSCALE: YES, YOUR HONOR. AND I THINK  
5 HE WENT THROUGH ALL OF THOSE ISSUES AS HE WAS SUPPOSED  
6 TO. AND UNDER THE LAW, THE FEDERAL COURT, ESPECIALLY  
7 WHEN A CASE IS FILED IN FEDERAL COURT AFTER THE STATE  
8 COURT'S FINAL JUDGMENT, UNDER THE ROOKER-FELDMAN  
9 DOCTRINE, SHOULDN'T GO BACK AND LOOK AT THAT IN AN  
10 APPELLATE FASHION.

11 THE COURT: DUE PROCESS CLAUSE OF THE  
12 CONSTITUTION.

13 MR. CLINKSCALE: WELL, I THINK THAT JUDGE  
14 ACTUALLY LOOKED AT THOSE ISSUES AND LOOKED AT ---

15 THE COURT: A STATE JUDGE PASSING ON FEDERAL  
16 CONSTITUTIONAL LAW.

17 MR. CLINKSCALE: MAY I RESPOND, YOUR HONOR?

18 THE COURT: SURE.

19 MR. CLINKSCALE: YES, BUT A STATE COURT CAN  
20 MAKE THOSE RULINGS AND ---

21 THE COURT: I AGREE.

22 MR. CLINKSCALE: --- IN THE END GAME, THOSE  
23 RULINGS ARE APPEALED TO THE U. S. SUPREME COURT. SO I  
24 THINK IN THAT FASHION THAT STATE COURT JUDGE WAS CORRECT  
25 IN WHAT HE DID. AND EVEN IF THE FEDERAL COURT BELIEVES

1 THAT THE STATE COURT IS IN ERROR, THE FEDERAL COURT  
2 SHOULD NOT INTERFERE, BECAUSE WHAT THE FEDERAL COURT  
3 SHOULD DO ---

4 THE COURT: UNLESS IT IS BASED ON FRAUD.

5 MR. CLINKSCALE: WELL, YOUR HONOR, THERE IS  
6 NO ---

7 THE COURT: AND DO YOU ADMIT THAT IF THERE  
8 IS A FINDING OF FRAUD ON BEHALF OF YOUR CLIENT,  
9 EVERYTHING THAT FLOWS THEREFROM GOES OUT THE WINDOW?

10 MR. CLINKSCALE: WELL, YOUR HONOR, MAY IT  
11 PLEASE THE COURT, WE BELIEVE THAT BECAUSE THE ACTION, THE  
12 FEDERAL COURT ACTION, WAS FILED AFTER THE JUDGE RENDERED  
13 A FINAL JUDGMENT IN ARKANSAS, THAT THIS COURT CAN'T  
14 REVIEW IT OR REVERSE IT. THEY HAVE TO GO ---

15 THE COURT: THAT'S WHERE WE DISAGREE.

16 MR. CLINKSCALE: I UNDERSTAND. AND EVEN IF THE  
17 COURT DECIDES IT IS GOING TO LOOK AT IT, IT HAS TO GIVE  
18 THAT JUDGMENT FULL FAITH AND CREDIT.

19 THE COURT: IF I THINK IT'S -- NO, NO. I  
20 DON'T HAVE TO GIVE FULL FAITH AND CREDIT TO A FRAUDULENT  
21 ACT.

22 MR. CLINKSCALE: WELL, YOUR HONOR, IF YOU LOOK  
23 AT WHAT THE JUDGE DID IN ARKANSAS, THERE'S NO FINDINGS OF  
24 FRAUD. AND OUR POSITION IS SIMPLY THAT THIS COURT CAN'T  
25 GO BACK AND LOOK AT AND LOOK AROUND WHAT HE DID IN THAT

1 STATE COURT.

2 THE COURT: WELL, THAT'S WHAT I'M DOING NOW.

3 MR. CLINKSCALE: I UNDERSTAND, YOUR HONOR. AND  
4 WE DISAGREE WITH THAT. WE BELIEVE THEY HAVE THE AVENUE  
5 TO DO THAT IN ARKANSAS, WHICH SOME OF THE PLAINTIFFS HAVE  
6 DONE IN APPEALS OUT THERE. BUT WE HAVE TO LOOK AT THIS  
7 UNDER ARKANSAS LAW. AND ARKANSAS LAW SAYS ---

8 THE COURT: NO, WE'RE TALKING ABOUT SOUTH  
9 CAROLINIANS THAT Y'ALL HAVE MADE FOR THE PURPOSE OF THIS  
10 ACTION CITIZENS OF ARKANSAS, SUBJECT TO ARKANSAS LAW.

11 MR. CLINKSCALE: YOUR HONOR, MAY IT PLEASE THE  
12 COURT, BUT THEY DID NOT OPT OUT. MR. HEGE DID NOT OPT  
13 OUT, WHICH HE HAD A RIGHT TO DO. AND MR. HEGE ACTUALLY  
14 HAD A LAWYER TO REVIEW THE NOTICE TO SEE WHETHER THE  
15 NOTICE WAS OKAY BEFORE HE MADE THAT PARTICULAR DECISION  
16 NOT TO OPT OUT. AND WHAT HE WANTED TO DO WAS FILE AN  
17 OBJECTION WITH THE COURT. AND HE UNDERSTOOD THAT IN  
18 ORDER TO FILE AN OBJECTION, YOU HAD TO STAY IN THE CLASS.

19 THE COURT: I UNDERSTAND THAT JUDGE OUT  
20 THERE LIMITED EVERYBODY'S RECOVERY TO \$15,000.

21 MR. CLINKSCALE: YOUR HONOR, I'M SORRY. I  
22 DIDN'T UNDERSTAND YOU.

23 THE COURT: WHERE IS THE ORDER? WHERE IS  
24 THE STATE JUDGE'S ORDER? YOU LIMITED EVERYBODY TO A  
25 MAXIMUM OF \$15,000.

1 MR. CLINKSCALE: I THINK THAT MAY BE CORRECT IN  
2 THE CLASS ACTION ORDER, YOUR HONOR.

3 THE COURT: YES, THAT'S WHAT WE'RE TALKING  
4 ABOUT.

5 MR. CLINKSCALE: YES, SIR, YOUR HONOR. AND  
6 THAT WAS AN AGREED UPON SETTLEMENT.

7 THE COURT: THAT'S WHAT I'M SAYING IS  
8 FRAUDULENT. YOU SETTLED THE SOUTH CAROLINIANS, WHOSE  
9 BILLS WERE GOING TO PROBABLY FAR EXCEED \$15,000, YOU TOOK  
10 THEIR MONEY AWAY FROM THEM IN THIS REPORTED CLASS ACTION  
11 SETTLEMENT.

12 MR. CLINKSCALE: WELL, YOUR HONOR, MAY IT  
13 PLEASE THE COURT ---

14 THE COURT: ISN'T THAT THE END RESULT?

15 MR. CLINKSCALE: WELL, FIRST OF ALL, YOUR  
16 HONOR, THE CLAIMANT'S ---

17 THE COURT: ANSWER ME THAT. ISN'T THAT THE  
18 EFFECT OF YOUR CLASS ACTION?

19 MR. CLINKSCALE: I'M ABOUT TO RESPOND, YOUR  
20 HONOR.

21 THE COURT: I WANT A YES OR NO.

22 MR. CLINKSCALE: WELL, THE BILLS ARE PAID.

23 THE COURT: ALL OF THEM?

24 MR. CLINKSCALE: YES, THE BILLS ARE ALWAYS  
25 PAID. SO NONE OF THESE CLAIMANTS HAVE ANYONE COMING

1 AFTER THEM FOR THE BILLS THAT THEY ACTUALLY PAY TO THE  
2 DOCTORS AND THE PROVIDERS.

3 THE COURT: NO, SIR. YOU'VE GOT A LIMIT OF  
4 \$15,000 IN THAT ORDER OUT THERE IN ARKANSAS, WHICH YOU  
5 ATTEMPT TO LIMIT THE FOREIGN CITIZENS OF SOUTH CAROLINA  
6 TO A \$15,000 PAYOUT.

7 MR. CLINKSCALE: OF WHICH THE INDIVIDUALS WHO  
8 DID NOT OPT OUT AGREED TO.

9 THE COURT: WELL, YOU CONTROL IT. YOU'RE  
10 THE ONE THAT CONTROLS IT.

11 MR. CLINKSCALE: WELL, JUDGE, MAY IT PLEASE THE  
12 COURT, THE CONTROL OF THE SETTLEMENT IS THE JUDGE. YOU  
13 CANNOT SETTLE THE CLASS ACTION WITHOUT A JUDGE.

14 THE COURT: NO, HE APPROVED AN ACTION WHERE  
15 Y'ALL LIMITED THE SETTLEMENT TO \$15,000.

16 MR. CLINKSCALE: AND HE WENT THROUGH ALL THE  
17 REQUIREMENTS UNDER THE LAW THAT HE NEEDED TO.

18 THE COURT: HE JUMPED THROUGH ALL THE HOOPS  
19 THAT YOU ARE SUPPOSED TO JUMP THROUGH.

20 MR. CLINKSCALE: YES, SIR.

21 THE COURT: BUT HE MISSED. HE DIDN'T  
22 INQUIRE AS TO DUE PROCESS. HE SAYS HE DID. BUT I'D LIKE  
23 TO KNOW WHAT HE DID. I'D LIKE TO KNOW WHAT HE DID TO  
24 REVIEW THESE CASES OVER HERE, IF ANYTHING.

25 MR. CLINKSCALE: WELL, I THINK THE DUE PROCESS

1 IN THIS CASE GOES TO THE NOTICE. IT GOES TO WHETHER THE  
2 NOTICE IS PROPER. HE WENT THROUGH AND DETERMINED THAT  
3 THE NOTICE WAS PROPER. HE WENT THROUGH THE COMMUNICATION  
4 OF WHAT THE NOTICE SAID.

5 THE COURT: WELL, I KNOW. I CONCEDE HE  
6 JUMPED THROUGH ALL THE HOOPS. BUT HE MISSED THE BIG ONE.

7 MR. CLINKSCALE: AND THAT GOES TO DUE PROCESS,  
8 THE PUBLISHING OF THE NOTICE IN THE USA TODAY, THE  
9 SETTING UP OF THE WEBSITE, THE ABILITY OF THE INDIVIDUALS  
10 TO CALL IN AND TO ASK QUESTIONS. ALL OF THAT GOES TO THE  
11 NOTICE. AND WHAT THE COURT HAS TO DO IS TO MAKE SURE  
12 THAT THAT NOTICE SIMPLY COMPLIES WITH DUE PROCESS UNDER  
13 THE CIRCUMSTANCES, AND HE MADE THAT DETERMINATION. AND I  
14 THINK HE DID DOT HIS "I's" AND CROSS HIS "T's" GOING  
15 THROUGH THAT PROCESS.

16 THE COURT: OH, I THINK Y'ALL DREW THE  
17 ORDER. YOUR LAW FIRM DREW THE ORDER.

18 MR. CLINKSCALE: YOUR HONOR, MY LAW FIRM DID  
19 NOT DRAW THE ORDER.

20 THE COURT: OH, THE OTHER LAW FIRM DID THAT  
21 I REVOKED THEIR LICENSE TO PRACTICE.

22 MR. CLINKSCALE: THEY WERE PRACTICING BEFORE  
23 HIM, ---

24 THE COURT: YES.

25 MR. CLINKSCALE: --- YOUR HONOR. I APOLOGIZE.



1 I DIDN'T MEAN TO INTERRUPT YOU.

2 THE COURT: ALL RIGHT.

3 MR. CLINKSCALE: BUT EVEN IN THAT CASE WHERE A  
4 LAW FIRM OR LAWYER IS ASKED TO WRITE AN ORDER FOR A  
5 JUDGE, IT DOESN'T LIMIT THE FORCE AND EFFECT OF THE  
6 JUDGE'S ORDER. IT IS STILL THE JUDGE'S ORDER.

7 THE COURT: NO. NO. IF IT WAS OBTAINED BY  
8 FRAUD, IT'S NOT WORTH THE PAPER IT IS WRITTEN ON.

9 MR. CLINKSCALE: YOUR HONOR, MAY IT PLEASE THE  
10 COURT, OUR POSITION IS THAT THERE IS NOTHING IN THE  
11 RECORD TO SUPPORT ANY FINDING OF FRAUD.

12 THE COURT: I'M PUTTING SOMETHING IN THE  
13 RECORD.

14 MR. CLINKSCALE: I UNDERSTAND THAT. BUT THE  
15 RECORD BEFORE YOU AND THE RECORD BEFORE THE COURT, AND  
16 SPECIFICALLY THE COURT IN ARKANSAS, FOUND ---

17 THE COURT: BUT FRAUD DOES NOT LIMIT YOU TO  
18 JUST WHAT IS IN THE RECORD. YOU CAN GO AND GIVE YOU TIME  
19 -- I'M TELLING YOU THINGS THAT HAPPENED. AND YOU SHOULD  
20 HAVE KNOWN, BUT YOU SAY YOU NEVER HEARD OF IT. I'LL GIVE  
21 YOU ALL THE TIME YOU WANT TO ANSWER THESE CHARGES,  
22 BECAUSE I'VE BEEN ON THIS BENCH 31 YEARS. AND I HOPE AND  
23 PRAY, I'VE NEVER LET A FRAUD CASE GET BY ME YET.

24 MR. CLINKSCALE: WELL, YOUR HONOR, I THINK I  
25 HAVE ANSWERED SOME OF THAT IN REFERENCE TO THE DUE

1     PROCESS ISSUES, WITH REFERENCE TO THE NOTICE, AND WITH  
2     REFERENCE TO THE FACT THAT MR. HEGE DID NOT OPT OUT AND  
3     THAT HE HAD REPRESENTATION. SO I THINK THAT GOES TO SOME  
4     OF THE POINTS THAT YOU MADE.

5             AND OUR POSITION IS THAT, ONE, I THINK WE HAVE  
6     A STRONG POSITION ON THE ROOKER-FELDMAN DOCTRINE. I  
7     BELIEVE THAT THE COURT NECESSARILY HAS TO GIVE FULL FAITH  
8     AND CREDIT BECAUSE THE JUDGE DID MAKE AN INQUIRY AS TO  
9     JURISDICTION, SUBJECT MATTER JURISDICTION, IN WHAT HE  
10    HAD. AND YOU WILL SEE THAT A NUMBER OF THE ATTORNEYS  
11    BROUGHT UP THE JURISDICTION QUESTION. AND I THINK ---

12            THE COURT:       IS IT YOUR ---

13            MR. CLINKSCALE: I'M SORRY, YOUR HONOR?

14            THE COURT:       IS IT YOUR VIEW OF THE LAW THAT  
15    YOU CAN GO OVER IN GEORGIA AND GET YOU A JUDGE ELECTED  
16    LIKE THEY ARE IN ARKANSAS, ELECTED BY THE PEOPLE, THEIR  
17    VENUE IS HIGHLY LIMITED, AND GET AN ORDER THAT AFFECTS  
18    EVERYBODY IN ALL 50 STATES?

19            MR. CLINKSCALE: WELL, YOUR HONOR, I THINK WHAT  
20    YOU HAVE TO DO IS MAKE SURE THAT YOU JUMP THROUGH THE  
21    HOOPS OF RULE 23, THAT YOU GIVE THE PROPER NOTICE TO  
22    EVERYBODY IN THE CLASS, YOU GIVE THEM THE OPPORTUNITY TO  
23    OPT OUT OF THE CLASS, AND YOU GIVE THEM THE OPPORTUNITY  
24    TO BE HEARD.

25            THE COURT:       AND IF THEY DON'T DO WHAT YOU

1 SAY, YOU SAY THEY'VE HAD DUE PROCESS?

2 MR. CLINKSCALE: YES, SIR, YOUR HONOR. WE  
3 BELIEVE THAT MR. HEGE HAS HAD DUE PROCESS. AND ALL WE'RE  
4 TALKING ABOUT HERE IS MR. HEGE, BECAUSE THE ONLY PERSON  
5 BEFORE THIS COURT IS MR. HEGE IN THIS PARTICULAR CASE.

6 THE COURT: I'M TAKING A VIEW OF THE CASE AS  
7 A WHOLE. I'VE BEEN IN THIS THING FOR ABOUT TWO YEARS  
8 NOW, OR MAYBE LONGER. AND I THINK I KNOW MORE ABOUT IT  
9 THAN YOU DO, OR MORE ABOUT IT THAN THEY TOLD YOU. I  
10 DON'T THINK YOU WERE TOLD EVERYTHING.

11 MR. CLINKSCALE: YOUR HONOR, I THINK YOU KNOW  
12 MORE THAN I DO, TOO.

13 THE COURT: NO, I'M TALKING ABOUT THE FACTS.

14 MR. CLINKSCALE: BUT WE DO BELIEVE THAT YOU  
15 HAVE TO GIVE RES JUDICATA EFFECT TO THIS ORDER. AND WE  
16 THINK THE JUDGE WENT THROUGH THE PROPER PROCESS OF  
17 LOOKING AT THOSE PARTICULAR ISSUES AND WE ALSO THINK THAT  
18 YOU HAVE TO GIVE COLLATERAL ESTOPPEL EFFECT. AND THERE  
19 IS A RELEASE, A RELEASE THAT IS ASSOCIATED WITH THE  
20 ACTUAL SETTLEMENT.

21 THE COURT: A RELEASE TO A LIMIT OF THE  
22 AMOUNT AND A RELEASE FOR ALL LIABILITY THAT THEY MAY HAVE  
23 IN THE FUTURE.

24 MR. CLINKSCALE: YES, YOUR HONOR. AND WE  
25 BELIEVE THAT IN THIS CASE ---

1 THE COURT: I JUST THINK, AS I SAY, IT WON'T  
2 PASS THE SMELL TEST.

3 MR. CLINKSCALE: I UNDERSTAND, YOUR HONOR. AND  
4 FINALLY, YOUR HONOR, WE DO BELIEVE THAT PUBLIC POLICY IS  
5 ON THE SIDE OF THE DEFENDANTS IN THIS CASE, BECAUSE  
6 PUBLIC POLICY PROMOTES THAT WE TRY TO SETTLE CLASS  
7 ACTIONS AND HAVE A COMPREHENSIVE SETTLEMENT SO THAT THERE  
8 ISN'T DUPLICITOUS LITIGATION ALL AROUND THE COUNTRY IN  
9 REFERENCE TO THESE TYPE ISSUES. SO I THINK THE  
10 DEFENDANTS HAVE PUBLIC POLICY ISSUES ON THEIR SIDE, ALSO.

11 SO, YOUR HONOR, THAT IS OUR MOTION IN THIS  
12 CASE. AND WE BELIEVE THAT THE COURT MADE THE PROPER  
13 FINDINGS. THE COURT WENT THROUGH THE PROPER SUBJECT  
14 MATTER DUE PROCESS HOOPS.

15 THE COURT: I UNDERSTAND.

16 MR. CLINKSCALE: AND WENT THROUGH THE ISSUES  
17 THAT IT NEEDED TO GO THROUGH IN ORDER TO GET TO THE FINAL  
18 JUDGMENT AND HAD THE APPROPRIATE TIMINGS IN REFERENCE TO  
19 THE NOTICE. AND REMEMBER, JUDGE, WE'RE ONLY TALKING  
20 ABOUT MR. HEGE HERE, AND WHAT MR. HEGE DID. THESE OTHER  
21 PEOPLE WHO OPTED OUT, THEIR CASES -- YOU HAVE THOSE  
22 CASES. AND IN THE PROPER TIME, THOSE WILL BE PRESENTED  
23 TO YOU. BUT HERE, THE STANDING ISSUES SAY THAT THIS IS  
24 THE ONLY PERSON BEFORE THE COURT NOW IN THIS CLAIM IS MR.  
25 HEGE.

1 THE COURT: ALL RIGHT.

2 MR. CLINKSCALE: THANK YOU, YOUR HONOR.

3 THE COURT: THANK YOU. ALL RIGHT.

4 MR. KNIE: YOUR HONOR, LET ME FIRST SAY  
5 THAT WE ARE NOT HERE, PER SE, ASKING THAT YOU OVERTURN  
6 THE ARKANSAS DECISION COMPLETELY, BUT WE ARE SIMPLY  
7 ASKING THAT YOU CARVE STEVE HEGE OUT OF THE ARKANSAS  
8 DECISION FOR THE SAME REASONS THAT I ASKED THE ARKANSAS  
9 COURT TO DO THAT. THIS IS NOT A CLASS ACTION AS WE WERE  
10 BEFORE YOU BEFORE SEEKING -- I GUESS A YEAR AGO. BUT  
11 TODAY WE COME BEFORE YOU SAYING THAT FOR TWO SOLID  
12 REASONS THERE ARE QUESTIONS OF FACT THAT NEED TO BE  
13 EXPLORED IN THIS CASE.

14 THE FIRST IS TO THE ADEQUACY OF THE NOTICE  
15 ITSELF WITH REGARD TO MR. HEGE AND EVERYBODY, FOR THAT  
16 MATTER. AND SECONDLY, AND YOU'VE ALREADY ADDRESSED IT  
17 VERY ARTICULATELY, THE ADEQUACY OF CLASS REPRESENTATIVES  
18 AND CLASS COUNSEL.

19 NOW, FIRST, AS TO THE ADEQUACY OF THE NOTICE TO  
20 MR. HEGE, WE DON'T NEED TO LOOK ANY FURTHER THAN MR.  
21 HEGE'S OWN AFFIDAVIT. IN HIS AFFIDAVIT, MR. HEGE SAID, I  
22 BOUGHT A POLICY AND I BELIEVE THE POLICY SAID THEY WERE  
23 GOING TO PAY ME THE EXACT ACTUAL AMOUNT OF THE CHARGES  
24 THAT WERE CHARGED. HE RELIED ON THAT. HE GOT CANCER.  
25 AND FOR THREE YEARS, THAT'S WHAT THEY DID. THEY PAID HIM

1 EXACTLY THE AMOUNT BILLED BY PROVIDERS.

2 THEN THREE YEARS LATER HE GETS A LETTER FROM  
3 TRANSAMERICA SAYING, WE ARE GOING TO CHANGE OUR CLAIMS  
4 PRACTICES. HE DIDN'T LIKE IT, BUT HE SAT THERE AND HE  
5 GOT A LETTER NEXT THAT SAID, WE ARE PUTTING YOU ON NOTICE  
6 OF A CLASS ACTION SETTLEMENT IN ARKANSAS. AND OF COURSE,  
7 HE WAS A LITTLE SHOCKED AND SURPRISED AS TO WHY HE WOULD  
8 BE GETTING SOMETHING FROM THE STATE COURT IN ARKANSAS.

9 NOW, HE AND HIS WIFE CAREFULLY READ IT OVER.  
10 AND AS HE TESTIFIED TO IN HIS DEPOSITION LAST FRIDAY, HE  
11 AND HIS WIFE ALONE PREPARED THE OBJECTION THAT I'M SURE  
12 THE COURT HAS READ AND THEY MAILED IT IN. AND HE SAID,  
13 AND THIS IS VERY, VERY IMPORTANT. THE REASON THAT HE  
14 OBJECTED, BUT DID NOT OPT OUT, WAS THAT HE BELIEVED THAT  
15 HE WOULD HAVE TO PAY BACK BENEFITS IF HE DID NOT JOIN.

16

17 AND HERE IS WHERE THE FRAUD COMES IN, JUDGE.  
18 THIS IS LANGUAGE RIGHT OUT OF THE CLASS SETTLEMENT  
19 NOTICE. THE COMPANY WILL AGREE TO WAIVE AND NOT PURSUE  
20 ANY CLAIMS, OR COUNTERCLAIMS, FOR OVERPAYMENT OF  
21 BENEFITS. WELL, HE FELT COERCED. HE DIDN'T LIKE IT, BUT  
22 HE COULD NOT AFFORD TO BE IN A POSITION WHERE HE WAS  
23 GOING TO HAVE TO PAY BACK THIS MONEY THAT HE WAS BEING  
24 PAID FOR THE LAST THREE YEARS.

25 NOW, AS THE COURT WELL KNOWS, AND I WILL KNOW,

1 THAT STATEMENT IS WORTHLESS EXCEPT TO COERCE A  
2 POLICYHOLDER. HOW COULD THEY HAVE A CLAIMS PRACTICE THAT  
3 SAID THEY HAD TO PAY THAT MONEY FOR THREE YEARS, CHANGE  
4 THEIR CLAIMS PRACTICE, AND REALLY THINK THEY COULD  
5 COLLECT MONEY BACK?

6 NO, WHAT IT WAS, YOUR HONOR, IT WAS A VERY  
7 CLEVERLY AND ARTFULLY WORDED CLASS ACTION NOTICE TO  
8 INTIMIDATE POLICYHOLDERS INTO AGREEING TO REMAIN IN A  
9 SETTLEMENT WHERE THEY WOULD ONLY GET \$15,000 AND THEY MAY  
10 HAVE HUNDREDS OF THOUSANDS OF DOLLARS IN CLAIMS. AND  
11 WHAT IT DID IS, IT ACTUALLY TREATED POLICYHOLDERS  
12 DIFFERENT WITHIN THE SAME CLASS.

13 SOMEONE LIKE STEVE HEGE WOULD HAVE BEEN  
14 ENTITLED TO RECOVER POTENTIALLY HUNDREDS OF THOUSANDS OF  
15 DOLLARS AND WOULD BE LIMITED TO \$15,000. SOMEONE ELSE  
16 MAY HAVE ONLY BEEN ENTITLED TO RECOVER \$15,000. THAT  
17 PERSON WOULD GET A HUNDRED PERCENT. STEVE HEGE MAY ONLY  
18 GET FIVE OR TEN PERCENT. SO THE CLASS MEMBERS WOULD BE  
19 TREATED DIFFERENTLY.

20 SO STEVE, IN THE STRONGEST OF TERMS, OBJECTED.  
21 HE BEGGED THE ARKANSAS COURT, PLEASE HELP US. WE ARE  
22 HONEST PEOPLE, BUT THIS IS NOT RIGHT. HE COULDN'T GO TO  
23 ARKANSAS BECAUSE OF THE STATE OF HIS HEALTH, YOUR HONOR.  
24 AND BECAUSE OF HIS IMMUNE SYSTEM, HE COULDN'T FLY ON  
25 PLANES. IF HE DROVE, HE COULDN'T STAY IN HOTELS.

1 I AGREED TO SPEAK ON HIS BEHALF IN ARKANSAS.

2 AND I ATTENDED THE HEARING ON NOVEMBER 9TH. AND  
3 WHEN I ATTENDED THE HEARING, I WAS ALLOWED TO SPEAK. AND  
4 I BRIEFLY TOLD THE COURT A FEW THINGS. I SAID, NUMBER  
5 ONE, YOUR HONOR, THERE IS THE WARD DECISION IN SOUTH  
6 CAROLINA, WHICH IS CONTRARY TO WHAT IS TAKING PLACE HERE  
7 AND THE RULE OF LAW IN OUR STATE. AND NOWHERE IN THE  
8 CLASS NOTICE WERE SOUTH CAROLINIANS, AND PARTICULARLY  
9 STEVE HEGE, ADVISED OF THE WARD DECISION.

10 SECONDLY, YOUR HONOR, IN THE CLASS NOTICE  
11 ITSELF, THEY ARE RELYING ON AN ACTUAL CHARGE STATUTE THAT  
12 HAD JUST BEEN ENACTED IN SOUTH CAROLINA AND MAKING  
13 POLICYHOLDERS TO BELIEVE THAT SOMEHOW IT WOULD BE  
14 RETROACTIVE, WHEN IN FACT WE ALL KNOW IT'S A PROSPECTIVE  
15 PIECE OF LITIGATION AND THE COURT SHOULD RECOGNIZE IT AS  
16 SUCH. AND I HANDED UP AN ORDER OF JUDGE JOE ANDERSON  
17 ADDRESSING THAT ISSUE.

18 THEN I ALSO TOLD THE ARKANSAS COURT THAT THERE  
19 WAS A SOUTH CAROLINA INSURANCE REGULATION THAT PREVENTED  
20 EXACTLY WHAT THAT COURT WAS TRYING TO DO. IT SAYS YOU  
21 CAN'T CHANGE A POLICYHOLDER'S INSURANCE POLICY EXCEPT IT  
22 HAS TO BE IN WRITING AND SIGNED BY THE POLICYHOLDER.

23 I ALSO MENTIONED THE CASE OF NICHOLS VS. STATE  
24 FARM AND INFORMED THE COURT THAT WE HAVE A BAD FAITH LAW  
25 IN SOUTH CAROLINA THAT ALLOWS US TO SUE INSURANCE



1 COMPANIES FOR BAD FAITH THAT DOES NOT EXIST IN OTHER  
2 STATES. THEREFORE, YET ANOTHER CAUSE OF ACTION.

3 IN CONCLUSION, I SAID TO THE COURT, WE WOULD  
4 ASK THAT YOU EITHER CARVE OUT SOUTH CAROLINA OR RE-NOTICE  
5 EVERY MEMBER OF THE SOUTH CAROLINA PORTION OF THE CLASS  
6 AND TELL THEM AT LEAST AT A MINIMUM THE THREE THINGS THAT  
7 I JUST ADDRESSED. AND I POINTED OUT TO THE COURT THAT  
8 UNDER A U. S. SUPREME COURT DECISION, CALLED I BELIEVE  
9 SHUTTS, EVERY STATE OR FEDERAL COURT IS REQUIRED TO DO A  
10 STATE-BY-STATE ANALYSIS WHEN YOU ARE DEALING WITH A  
11 NATIONAL CLASS ACTION BEFORE YOU RULE ON IT.

12 THEY DIDN'T DO THIS OR THEY WOULD HAVE KNOWN  
13 ABOUT WARD. THEY WOULD HAVE KNOWN ABOUT THE SOUTH  
14 CAROLINA STATUTE BEING PROSPECTIVE AND THE SOUTH CAROLINA  
15 REG.

16 SO, IN ESSENCE, I SAID, JUDGE, JUST RE-NOTICE  
17 THE FOLKS IN SOUTH CAROLINA OR LET STEVE HEGE OUT. AND  
18 WHAT HARM WOULD IT HAVE BEEN TO LET ONE PERSON OUT,  
19 BECAUSE HE WAS THE ONLY PERSON REPRESENTED THAT SHOWED  
20 UP, EXCEPT THE TWO PEOPLE FROM MISSISSIPPI. IT WASN'T  
21 LIKE IT WAS GOING TO CHANGE THE CLASS AND MASSES OF  
22 PEOPLE WERE SHOWING UP TRYING TO GET OUT.

23 SO CLEARLY, THE NOTICE WAS DEFECTIVE. IT  
24 FAILED TO INFORM SOUTH CAROLINIANS, AND IT WAS  
25 FRAUDULENT, IN THAT IT SAID THAT YOU MIGHT HAVE TO PAY

1 BACK MONEY. BUT EVEN MORE IMPORTANTLY, AS THE COURT  
2 POINTED OUT, CLASS COUNSEL AND CLASS REPRESENTATIVES WERE  
3 TOTALLY INADEQUATE. WHAT THE U. S. SUPREME COURT HAS  
4 SAID IS, FOR SOMEONE TO ASK FOR FULL FAITH AND CREDIT,  
5 ASK FOR RES JUDICATA, THE BURDEN IS ON THEM. AND YOU  
6 MUST LOOK TO THE LAW OF THE RENDERING STATE.

7 AND OF COURSE, ARKANSAS WOULD BE THE RENDERING  
8 STATE. AND IN ARKANSAS, THERE ARE FIVE ELEMENTS THAT YOU  
9 MUST PROVE TO ESTABLISH RES JUDICATA. THE MOST IMPORTANT  
10 ONE IS THE THIRD ONE. AND THAT ELEMENT SAYS THAT THE  
11 CASE AT HAND MUST TRULY BE AN ADVERSARIAL CONTEST.

12 AND CLEARLY WHAT YOU HAD BEFORE THE ARKANSAS  
13 COURT WAS SIMPLY A PRE-LITIGATION AGREEMENT TO GET A  
14 JUDGMENT. ALMOST EVERY CASE IN THE UNITED STATES --  
15 EVERY STATE IN THE UNITED STATES REQUIRES FOR EVERY CASE  
16 TO BE CONTESTED IN GOOD FAITH. IN THE RUNYAN CASE, THERE  
17 WAS NO DISCOVERY. THERE WERE NO DEPOSITIONS TAKEN, AND  
18 AS THE COURT POINTED OUT, BUT YET SOMEHOW THE LAWYERS  
19 EARNED THREE AND A HALF MILLION DOLLARS.

20 THE COURT: IT WAS PENDING A TOTAL OF THREE  
21 WEEKS.

22 MR. KNIE: YES, SIR. IT WAS ACTUALLY FILED  
23 AND THEY IMMEDIATELY REQUESTED THE PRELIMINARY APPROVAL  
24 HEARING. AND THE ONLY REASON IT TOOK UNTIL NOVEMBER FOR  
25 THEM TO HAVE A FINAL HEARING WAS BECAUSE THERE WAS ONE

1 SCHEDULED IN JULY THAT AS I REMEMBER WASN'T PROPERLY  
2 NOTICED. AND UNFORTUNATELY ONE OF MY COLLEAGUES FLEW ALL  
3 THE WAY TO ARKANSAS TO ARGUE WHAT I ULTIMATELY ARGUED,  
4 ONLY FOR IT NOT TO GET ARGUED. SO WHAT REALLY HAPPENED  
5 IS I THINK IT WAS MAYBE FILED IN MARCH AND FINAL APPROVAL  
6 WOULD HAVE BEEN FOUR MONTHS LATER IN JULY, EXCEPT FOR THE  
7 CONTINUANCE.

8 SO CLEARLY, THE DEFENDANT HAS NOT CARRIED THE  
9 BURDEN OF PROOF. CLEARLY THERE ARE SERIOUS QUESTIONS OF  
10 FACT ABOUT THE ADEQUACY OF THE NOTICE, ABOUT THE ADEQUACY  
11 OF THE REPRESENTATION.

12 THE COURT: WELL, YOUR CO-COUNSEL IS TRYING  
13 TO GET YOUR ATTENTION.

14 MR. KNIE: THEY CLAIM NOT, BUT I'M SURE  
15 THERE'S SOMETHING THAT I NEED TO KNOW THAT I DON'T KNOW  
16 RIGHT NOW, YOUR HONOR. BUT IN CONCLUSION ---

17 THE COURT: WELL, I THINK THEY'RE TRYING TO  
18 GET YOUR ATTENTION.

19 MR. KNIE: THEN YOU'RE RIGHT. LET ME SAY  
20 ONE OTHER THING, YOUR HONOR, ABOUT THE ISSUE OF APPEAL.  
21 THE APPEAL IN ARKANSAS IS ONLY AN APPEAL BY SOME PEOPLE  
22 THAT TRIED TO INTERVENE AND WERE NOT ALLOWED TO  
23 INTERVENE. IT WASN'T AN APPEAL ON THE MERITS OF THE  
24 WHOLE CASE.

25 AND WHETHER THE APPEAL IN ARKANSAS IS PENDING

1 OR NOT IN NO WAY AFFECTS THIS COURT'S ABILITY TO MAKE A  
2 FINDING IN SOUTH CAROLINA THAT THE NOTICE WAS DEFECTIVE;  
3 THAT THE REPRESENTATIVES WERE DEFECTIVE; AND THEREFORE,  
4 THAT WE SHOULD NOT BE BOUND AND IT SHOULD NOT BE RES  
5 JUDICATA.

6 BUT AGAIN, WE ARE NOT HERE ON A MOTION SEEKING  
7 JUDGMENT ON THE MERITS TODAY. WE ARE SIMPLY DEFENDING A  
8 MOTION FOR SUMMARY JUDGMENT. AND THERE ARE AMPLE FACTS  
9 THAT WOULD ESTABLISH THAT, IN FACT, WE SHOULD PREVAIL IN  
10 THIS MATTER, YOUR HONOR. THANK YOU.

11 THE COURT: ALL RIGHT.

12 MR. CLINKSCALE: MAY IT PLEASE THE COURT. YOUR  
13 HONOR, A SHORT REPLY?

14 THE COURT: YOU MAY.

15 MR. CLINKSCALE: I THINK THAT MR. KNIE -- HE  
16 JUST GOT UP HERE AND SHOWED YOU THE DUE PROCESS. HE WENT  
17 TO ARKANSAS AND HE PUT ALL OF THESE ARGUMENTS BEFORE THAT  
18 JUDGE.

19 THE COURT: APPARENTLY THE JUDGE DIDN'T  
20 LISTEN.

21 MR. CLINKSCALE: WELL, THE JUDGE DID CONSIDER  
22 THEM AND RULED AGAINST THEM. AND THAT'S WHAT I'M TALKING  
23 ABOUT. EVEN THOUGH THE FEDERAL COURT MAY DISAGREE WITH  
24 WHAT THE JUDGE DID, THE FEDERAL COURT MAKES THE INQUIRY  
25 AS TO DID HE ACTUALLY LOOK AT THESE THINGS? DID HE

1 CONSIDER THEM? NOT WHETHER HE'S WRONG OR RIGHT.

2 YOUR HONOR, HE SAYS HE WANTS YOU TO -- AS HE  
3 WENT TO ARKANSAS AND ASKED THEM TO CARVE OUT SOUTH  
4 CAROLINA, HE WANTS YOU TO CARVE OUT MR. HEGE AND HE WANTS  
5 YOU TO UNDO THE SETTLEMENT IN THE CLASS ACTION AS TO MR.  
6 HEGE. IF YOU GO DOWN THAT PATH, YOU HAVE TO UNDO THE  
7 SETTLEMENT -- THE WHOLE LISTED SETTLEMENT WITH ALL OF  
8 THESE OTHER INDIVIDUALS WHO ARE NOT EVEN IN SOUTH  
9 CAROLINA. AND WHAT ABOUT THEIR DUE PROCESS? AND I DON'T  
10 THINK THAT THIS COURT CAN DO THAT.

11 THE COURT: I DON'T HAVE THEM BEFORE ME.  
12 BUT I KNOW THEY ARE GATHERING SOMEWHERE AND PRAYING THAT  
13 THEY ARE RELIEVED.

14 MR. CLINKSCALE: AND YOUR HONOR, HE WENT  
15 THROUGH THE ADEQUACY OF THE NOTICE. WELL, THE COURT  
16 CONSIDERED THE ADEQUACY OF THE NOTICE. AND HE FAILED TO  
17 STATE TO YOU, WHICH I STATED AT THE BEGINNING, THAT MR.  
18 HEGE ACTUALLY SENT HIS NOTICE TO HIS ATTORNEY TO REVIEW  
19 AND GOT A RESPONSE FROM HIS ATTORNEY ABOUT THE NOTICE.

20 THE COURT: AND THE ATTORNEY SAID, DO WHAT  
21 YOU WANT TO.

22 MR. CLINKSCALE: HE SAID THE NOTICE WAS LEGIT.  
23 IT WAS OKAY. AND YOU CAN OPT OUT OR YOU CAN STAY IN.  
24 THAT'S WHAT HIS ATTORNEY -- HE GOT LEGAL ADVICE. WHETHER  
25 THE LEGAL ADVICE IS WRONG OR RIGHT, I'M NOT OPINING ON

1 THAT AT ALL.

2 THE COURT: OKAY.

3 MR. CLINKSCALE: THANK YOU, YOUR HONOR.

4 THE COURT: THANK YOU. ALL RIGHT, ANYTHING  
5 ELSE?

6 MR. KNIE: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT, I'LL GET TO THIS  
8 TODAY OR TOMORROW, AT LEAST BY FRIDAY. OKAY.

9 MR. CLINKSCALE: THANK YOU, YOUR HONOR.

10 MR. KNIE: THANK YOU, JUDGE.

11 THE COURT: ALL RIGHT, THANK YOU, GENTLEMEN.

12 (END OF HEARING)

13 CERTIFICATE

14 I, GERI DUNN KIRKLEY, U. S. COURT REPORTER FOR THE  
15 DISTRICT OF SOUTH CAROLINA, DO HEREBY CERTIFY TO THE BEST  
16 OF MY ABILITY AND KNOWLEDGE THAT THE FOREGOING PAGES  
17 CONSTITUTE AND TRUE AND CORRECT TRANSCRIPT OF THE  
18 PROCEEDINGS IN THE WITHIN-CAPTIONED CASE.

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UNITED STATES COURT REPORTER

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